

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #10	CCRB Case #: 201504191	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/15/2014 4:05 PM	Location of Incident: 150th Street and 73rd Avenue	Precinct: 107	18 Mo. SOL 4/15/2016	EO SOL 4/15/2016	
Date/Time CV Reported Tue, 05/26/2015 2:36 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/26/2015 2:36 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Delvillar	06104	941640	107 PCT
2. POM Michael Demonda	26018	945659	107 PCT
3. SGT Kelly Busby	168	897104	107 PCT
4. An Officer			107 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Delvillar	Abuse: PO David Delvillar stopped the car in which § 87(2)(b) was an occupant, at § 87(2)(b) in Queens.	
B.POM Michael Demonda	Abuse: PO Michael Demonda stopped the car in which § 87(2)(b) was an occupant, at § 87(2)(b) in Queens.	
C.SGT Kelly Busby	Abuse: Sgt. Kelly Busby authorized the detention of § 87(2)(b) at the 107th Precinct stationhouse.	
D. An Officer	Abuse: An Officer damaged § 87(2)(b)'s property.	
E.POM David Delvillar	Abuse: PO David Delvillar searched the car in which § 87(2)(b) was an occupant at the 107th Precinct stationhouse.	
§ 87(4-b), § 87(2)(g)		

Case Summary

The CCRB obtained video that partially captures the following incident (See Board Review – Car Surveillance Video). On October 15, 2014, at approximately 4:05 PM, at the intersection of 153rd Street and 73rd Avenue in Queens, § 87(2)(b) was pulled over by PO David Delvillar and PO Michael Demonda, while driving his recently purchased 2011 Porsche GT3R (**Allegation A and B**). PO Delvillar asked § 87(2)(b) for his license, registration, and insurance, which § 87(2)(b) provided, along with some car dealership paperwork. The officers told § 87(2)(b) that his car's temporary tag and its VIN plate appeared to be improper and inauthentic. An electronic database search conducted by PO David Delvillar allegedly yielded no results for the car. The officers then asked § 87(2)(b) to provide further documentation to prove his ownership of the car. After a supervisor, Sergeant Kelly Busby, arrived on the scene, § 87(2)(b) was asked by PO Delvillar to step out of his car and placed in handcuffs (**Allegation C**). § 87(2)(b) was then transported to the 107th Precinct stationhouse in the unmarked police car by PO Demonda, where he was lodged in a holding cell. In the same time period, PO Delvillar drove § 87(2)(b)'s car back to the stationhouse. An officer allegedly tampered with a surveillance camera in § 87(2)(b)'s car, and, at some point thereafter, intentionally deleted video footage from the camera's memory card (**Allegation D**). After reaching the stationhouse, PO Delvillar opened the glove compartment to see if he could find any further paperwork for the car (**Allegation E**). PO Delvillar also opened a folder he found on top of the front passenger side seat, in which he allegedly found the paperwork he was looking for. PO Delvillar then ran another database search inside the stationhouse, and received results verifying § 87(2)(b)'s ownership. After approximately an hour and a half, § 87(2)(b) was released with a traffic summons for improper display of plates, a traffic violation of N.Y. V.T.L. § 402-(1)(b). § 87(4-b) § 87(2)(g) was ultimately found guilty of this charge in traffic court on § 87(2)(b) [§§ 86(1)(2)&(4)&(b)&(c)&(d)] and filed his CCRB complaint on the same day. § 87(2)(b) stated that he had waited until his traffic court case was fully completed to file his CCRB complaint (See: § 87(2)(b)'s CCRB Complaint and Statement; Board Review – N.Y. V.T.L. § 402-(1)(b), Summons, Traffic Court Disposition).

Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation. Notice of Claim results are pending (see Board Review – FOIL Request). § 87(2)(b), § 87(2)(a) 160.50

Civilian and Officer CCRB Histories

§ 87(2)(b) has filed two prior CCRB complaints § 87(2)(b)

Sgt. Busby has been a member of service for 24 years, and he has been a subject in four CCRB cases, totaling nine allegations, none of which have been substantiated. § 87(2)(g)

§ 87(2)(b) Sgt. Busby's last CCRB complaint was filed in 1999.

PO Delvillar has been a member of service for nine years, and has been a subject in one previous CCRB complaint, which was closed as complainant uncooperative. § 87(2)(g)

PO Demonda has been a member of service for seven years, and has been a subject in eight CCRB cases, totaling 16 allegations. Two of these allegations have been substantiated – one for Physical Force and the other for Abuse – Stop (both charges in CCRB case # 201207229, currently assigned to the Administrative Prosecution Unit), § 87(2)(g)

Findings and Recommendations

Allegation A - PO David Delvillar stopped the car in which § 87(2)(b) was an occupant, at 150th Street and 73rd Avenue in Queens.

Allegation B – PO Michael Demonda stopped the car in which § 87(2)(b) was an occupant at 150th Street and 73rd Avenue in Queens.

It is not disputed that at approximately 4:05 pm, on October 15, 2014, PO Delvillar and PO Demonda stopped § 87(2)(b)'s car, after they observed that the State of Texas temporary license tag on the rear bumper was displayed improperly (See: PO Delvillar's, PO Demonda's, and Sgt. Busby's Statements; Board Review – Video #1; Board Review – Transcription of Car Surveillance Video. See Detailed IA). Furthermore, it is not disputed that § 87(2)(b) had attached the temporary tag to the rear bumper of his car by encasing it in plastic, and that PO Delvillar issued a summons to § 87(2)(b) for the improper display of the temporary tag, a violation of N.Y. V.T.L. § 402-(1)(b) (See: § 87(2)(b)'s Statement; Board Review – Photograph of Temporary Tag, Board Review – Summons).

N.Y. V.T.L. § 402-(1)(b), regulating the form and display of all number plates assigned to motor vehicles operating in the state, states the following: "Numbers plates shall be kept clean and in a condition so as to be easily readable and shall not be covered by glass or any plastic material..." (See Board Review – N.Y. V.T.L. § 402)

Both PO Delvillar and PO Demonda observed that § 87(2)(b) was committing a traffic violation by improperly displaying his temporary tag. Furthermore, this fact was corroborated by Sgt. Busby, and acknowledged by § 87(2)(b) himself, who provided documentary evidence that his tag was covered in plastic. On May 26, 2015, the Department of Motor Vehicles' Traffic Violations Division in Queens found § 87(2)(b) guilty of the violation (See Board Review – Traffic Court Case Disposition).

§ 87(2)(g)

Allegation C - Sgt. Kelly Busby authorized the detention of § 87(2)(b) at the 107th Precinct stationhouse.

It is undisputed that Sgt. Busby, as the Anti-Crime supervisor, authorized PO Delvillar and PO Demonda to bring § 87(2)(b) back to the stationhouse for further investigation. § 87(2)(g)

§ 87(2)(b) stated that after being pulled over, PO Delvillar asked him for his driver's license, registration, and insurance. § 87(2)(b) stated that he provided all three documents, and also provided paperwork from the Texas dealership he had recently purchased the car from. § 87(2)(g)

§ 87(2)(b) stated that despite providing these documents, PO Delvillar and PO Demonda questioned him about the car's provenance. Specifically, the officers questioned him about the car's temporary tag, which they said looked improper. The officers also questioned him about the Vehicle Identification Number (VIN) plate attached to the dashboard, stating that the plate appeared to be tampered with. After a supervisor, Sgt. Kelly Busby, arrived on the scene, PO Delvillar advised § 87(2)(b) that he would be taken back to the stationhouse. § 87(2)(b) was handcuffed and transported to the 107th Precinct stationhouse, where he was lodged in a holding cell for approximately an hour and a half (See Board Review – Supplemental Phone Statement of § 87(2)(b) See Detailed IA)

PO Delvillar and PO Demonda stated that § 87(2)(b) refused to provide the documentation they needed to verify his ownership of the car. PO Delvillar and PO Demonda stated that they needed to verify § 87(2)(b)'s ownership because the VIN plate and temporary tag appeared suspicious. PO Delvillar, who acknowledged that § 87(2)(b) had provided his driver's license and car dealership paperwork, stated that the VIN plate appeared "unofficial," because it was inscribed on a plastic sticker instead of a metal plate (See PO Delvillar's Statement). PO Demonda corroborated this. A DMV database search for § 87(2)(b)'s car, conducted during the stop, failed to produce any results. PO Delvillar, who performed the database search on a handheld device, stated that he searched for the temporary tag number, and that the query was returned as "no results." (See PO Delvillar's Statement) § 87(2)(b) did not provide further paperwork supporting his ownership of the car (such as a bill of sale), when they asked him for it after running the DMV search (See PO Delvillar's and PO Demonda's Statements).

Sgt. Busby stated that when he responded, PO Delvillar told him that § 87(2)(b) "did not want to produce the paperwork" that "matched the car." (See Sgt. Busby's Statement) Sgt. Busby was advised that the temporary tag looked "fake," and that a database search yielded "no results" which was cause to suspect that the temporary tag was forged. When Sgt. Busby approached § 87(2)(b) and asked him for "additional paperwork," § 87(2)(b) was "evasive," telling Sgt. Busby that he had already given the officers enough paperwork. Sgt. Busby did not know what paperwork was actually provided to the officers prior to his arrival, but stated that the documents necessary for a roadside check typically include a driver's license, registration, and title. Sgt. Busby did not recall any discussion about the VIN plate being suspicious. Because § 87(2)(b) was being uncooperative, Sgt. Busby authorized the officers to take § 87(2)(b) back to the stationhouse to conduct additional checks. Sgt. Busby stated that § 87(2)(b) was considered under arrest at this point (See Sgt. Busby's Statement). The command log entry for § 87(2)(b)'s arrest lists the charge as Illegal Possession of a Vehicle Identification Number, Penal Law §170.70. (See Board Review – NYPD Documents: Command Log).

The CCRB obtained video footage from surveillance cameras inside § 87(2)(b)'s car. Some of the verbal interaction between § 87(2)(b) and the officers was captured in the audio. The first video file begins with an officer asking § 87(2)(b) for his license, registration and insurance followed by some inaudible responses and then an officer asks "Do you have paperwork?" § 87(2)(b)'s response is inaudible but an officer then states "Let me see that paperwork that says New York right there." The next video file captures a discussion between the officers and § 87(2)(b) regarding § 87(2)(b) purchasing the car from a Texas dealership. In the third file, the officers inform § 87(2)(b) that there is a problem with his tag. An officer is seen inspecting the bottom left corner of the windshield, presumably where the VIN plate is located. In subsequent video files, the officers are seen inspecting the rear bumper of § 87(2)(b)'s car and § 87(2)(b) is heard telling the officers "there's my paperwork right there"

at least twice and an officer tells § 87(2)(b) that the VIN appears odd (See Board Review – Car Surveillance Video, Video Transcription).

It is clear from the video that the officers were suspicious of the car’s origin, its temporary tags, and its VIN plate (See: Board Review – Video Files 2, 4, 9, 12; Board Review – Video Transcription). The video suggests that § 87(2)(b) provided some paperwork, due to § 87(2)(b) § 87(2)(b) referencing his paperwork being right there (See Board Review – Video Files 1, 13). The video also suggests that § 87(2)(b) provided his driver’s license (undisputed), registration, and insurance, as there is no further request for or discussion about these documents after the first request (See Board Review -- Video File #1). The video also suggests that § 87(2)(b) § 87(2)(b) was stopped at approximately 4:05 pm; asked to exit his vehicle at approximately 4:34 pm; and released from the stationhouse at approximately 6:07 pm.

The CCRB obtained the results of the DMV database search conducted by PO Delvillar (See Board Review – DMV Database Search Results). The first set of search results are time-stamped 16:18 (4:18 pm). Searched by VIN, the results display the temporary tag ID, with expiration dates; the year, make, model and color of § 87(2)(b) s car; the corresponding VIN; and “Buyer Temporary Tag” information, displaying § 87(2)(b) s name and address, and car loan details. PO Delvillar could not explain the discrepancy between these database search results and the “no results” he stated he saw during the stop (See Board Review – PO Delvillar’s Statement). Sgt. Busby could not explain the discrepancy either (See Board Review – Sgt. Busby’s Statement). Search results time-stamped 4:22 pm and 4:27 pm display further information about § 87(2)(b) including driving and motor vehicle history and prior arrest record. These results show that § 87(2)(b) had no open warrants or active orders of protections against him (See Board Review – DMV Database Search Results). The final documented database search appears to have been conducted at 4:27 pm, prior to § 87(2)(b) being asked to exit his vehicle (See Board Review – Car Surveillance Video, Video Transcription). PO Demonda and Sgt. Busby both stated that database searches conducted at the stationhouse established § 87(2)(b) s ownership of the car, at which point he was released after receiving a VTL violation summons.

Absent aggravating circumstances, the police should not make a custodial arrest for a traffic offense and should instead issue a traffic summons and release the motorist. (See Board Review – People v. Abdul-Akim, 27 Misc.3d 1220 (A) (Sup. Ct. Kings Cty. 2010)). Aggravating circumstances may include a driver's lack of identification, valid driver’s license or a driver’s refusal to identify himself (See *Id.*). (See Board Review – Patrol Guide Procedure 209-09 – allowing for removal of a motorist to the command for investigation when there is doubt regarding the identity of the motorist). An investigatory detention justified at its inception may develop into an unlawful arrest based on the length of time a person is detained and the manner in which he or she is held. (See Board Review – People v. Robinson, 282 A.D.2d 75 (App. Div. 1st Dep’t. 2001)) A reasonable investigatory detention must be temporary and last no longer than is necessary to confirm or dispel the officers suspicions and the methods employed should be the least intrusive reasonably available. (See *Id.*). “The detention of a defendant in a cell for an hour has constituted an arrest.” (See *Id.*)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – An Officer damaged § 87(2)(b) s property.

Although § 87(2)(b) s car surveillance cameras record non-stop, there is no video footage from the time period between PO Delvillar’s return to the stationhouse to § 87(2)(b) s exit from the stationhouse parking lot upon release. § 87(2)(b) alleged that an officer intentionally deleted this footage.

PO Delvillar stated that while driving the car back to the stationhouse, he attempted to readjust the rear view mirror. When doing so, PO Delvillar’s hand got caught in the camera’s wiring, thereby disconnecting it. PO Delvillar did not attempt to reconnect the wires because he did not know how to. PO Delvillar stated that he did not tamper with the camera in any other manner.

The video footage, from PO Delvillar’s drive back to the stationhouse, briefly shows him making contact with the camera, possibly while adjusting the rear view mirror (See: Board Review – Video # 19; Board Review – Video Transcription). However, the camera continues to record both video and audio. § 87(2)(b) submitted 83 video files, each file documenting one minute segments of the incident. Due to this peculiar method of transmission, the investigation could not view the entire incident in one cohesive stream. However, in the files provided, the investigation did not find any evidence of an officer physically tampering with the camera causing it to stop recording. At no point does the camera abruptly stop recording. § 87(2)(g)

§ 87(2)(g)

Allegation E – PO David Delvillar searched the car in which § 87(2)(b) was an occupant at the 107th Precinct Stationhouse.

PO Delvillar stated that § 87(2)(b) was not under arrest, and was being brought back to the stationhouse for investigatory purposes (See PO Delvillar’s Statement). Upon returning to the stationhouse in § 87(2)(b) s car, PO Delvillar opened the glove compartment to see if it contained any additional paperwork for the car. PO Delvillar did not find any paperwork in the glove compartment. However, PO Delvillar opened a folder on the passenger side seat, and found that it contained relevant paperwork (See PO Delvillar’s Statement).

A search incident to the recent arrest of an occupant is justified when the arrestee is within reaching distance of the passenger compartment at the time of the search or when it is reasonable to believe the vehicle contains evidence of the offense of arrest (See --Board Review: People v. Tashbaeva, 35 Misc.3d 812 (Crim. Ct. Richmond Cty. 2012) (Arizona v. Gant, 556 U.S.332 (2009)). Patrol Guide Procedure 218-13 defines the purpose of an inventory search as: “to protect property, ensure against unwarranted claims of theft, and protect uniformed members of the service and others against dangerous instrumentalities.” (See Board Review – Patrol Guide Procedure 218-13) P.G. 218-13 also specifies that an officer may search a glove compartment to secure contents that are to be inventoried (See *Id.*).

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date

